



March 13, 2000

Ms. Lillian Guillen Graham  
Office of the City Attorney  
City Of Mesquite  
Box 850137  
Mesquite, Texas 75183-0137

OR2000-0991

Dear Ms. Guillen Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132925.

The City of Mesquite (the "city") received four requests for any offense report or arrest information regarding four named individuals in the last five years. You contend the requested information is excepted from required public disclosure by sections 552.101 of the Government Code. We have reviewed information you submitted and considered the exception you claim.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This section encompasses other federal statutes and case law.

To the extent the requestor is asking for any unspecified records in which a named individual is identified as a "suspect," the requestor, in essence, is asking that the city compile that individual's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See Open Records Decision Nos. 616 (1993), 565 (1990)*. The city, therefore, must withhold all compilations of the named individuals' criminal history pursuant to section 552.101.

You also submit offense report numbers 97043077 and 99057433 in which one of the named individuals is the reportee and not the "suspect" in those incidents. You raise no exception in the Public Information Act to the required public disclosure of these offense reports. If a governmental body wishes to withhold certain information, it must establish that a particular exception applies to the information. *See* Gov't Code § 552.301. If a governmental body does not establish how and why an exception applies to the requested information, the attorney general has no basis on which to pronounce it protected. *See* Open Records Decision No. 363 (1983). Accordingly, the city must release offense report numbers 97043077 and 99057433 in response to the request. However, we note that the offense reports contain social security numbers and Texas driver's license information.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* There is no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act. However, it should be noted that section 552.353 of the Public Information Act does impose criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, you should determine if such information was obtained or is maintained by the city in accordance with any provision of law enacted on or after October 1, 1990.

Finally, access to Texas driver's license number information is governed by section 552.130 of the Government Code. Section 552.130 provides in relevant part that:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

Therefore, you must withhold the Texas driver's license number information pursuant to section 552.130. We have marked the information accordingly.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguía", is written over a horizontal line.

Rose-Michel Munguía  
Assistant Attorney General  
Open Records Division

RMM\jc

Ref: ID# 132925

Encl: Submitted documents

cc: Mr. Chris Stewart  
2602 McKinney Avenue, Suite 230  
Dallas, Texas 75205  
(w/o enclosures)